

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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UNITED STATES, et al., : Civil Action No.:
: 1:23-cv-108
Plaintiffs, :
versus :
: Friday, February 9, 2024
GOOGLE LLC, : Alexandria, Virginia
: Pages 1-28
Defendant. :
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The above-entitled motions hearing was heard before
the Honorable John F. Anderson, United States Magistrate
Judge. This proceeding commenced at 10:07 a.m.

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P R O C E E D I N G S

THE DEPUTY CLERK: Calling civil action matter 23-cv-108, United States, et al. versus Google LLC.

THE COURT: I'll have everyone introduce themselves once again, and tell me who's going to argue on behalf of each party.

MR. HOCHUL: Good morning, Your Honor. William Hochul for the United States.

MS. WOOD: Good morning, Your Honor. Nice to see you. Julia Wood for the United States. I'll be arguing today.

MR. HENRY: Good morning, Your Honor. Ty Henry from the Office of the Attorney General of Virginia on behalf of the plaintiff United States.

THE COURT: Thank you.

MR. TEITELBAUM: And Aaron Teitelbaum for the United States. Good morning, Your Honor.

THE COURT: Good morning.

MR. EWALT: Good morning, Your Honor. Andrew Ewalt from Freshfields on behalf of Google. I'm joined by my colleague, Claire Leonard, and by Craig Reilly as well. I'll be arguing for Google.

THE COURT: Okay. Thank you.

Well, you all have your trial date now, and you know what will happen then, and I know you're going to be

1 coming in and seeing Judge Brinkema in a couple weeks to
2 work out some other briefing and schedule orders --
3 scheduling issues as far as motions ago.

4 Mr. Ewalt, I want to just ask you a couple of
5 questions before I hear from Ms. Wood just to make sure I
6 understand what was said in the opposition.

7 You indicated that the expert did not refer to or
8 rely on the hyperlinks. Help me understand what you mean by
9 that. Okay. So there --

10 MR. EWALT: Yes, Your Honor.

11 THE COURT: So there's several hundred documents
12 that they have identified that apparently your experts
13 identified as documents that they're relying on.

14 When you say -- what is it that you mean when you
15 say they didn't rely on the information in the hyperlinks?

16 MR. EWALT: Yes, Your Honor.

17 So if I may back up one moment. The issue
18 involves -- there are documents that were produced in this
19 litigation, both emails and non-email documents. For the
20 non-email documents, when those documents contain a
21 hyperlink to another document, those sometimes -- sometimes
22 those documents could go to -- those links, rather, could go
23 to documents that were held within a custodian's file, they
24 could go to a centrally-stored file, they could go to a
25 publicly-accessible Internet site. As Your Honor's probably

1 familiar with from just clicking on links throughout the
2 Web, they could go anywhere.

3 So when the non-email documents were collected,
4 and those non-email documents have links in them, by virtue
5 of the links, the linked-out documents are not necessarily
6 collected. Those linked documents could be collected if
7 they would sort of independently fall within the
8 collection -- the parameter collections for the -- excuse
9 me, the collection parameters.

10 And so the documents that the experts relied on --
11 to answer Your Honor's question, the documents that the
12 experts relied upon are the ones that are cited in their
13 expert reports, and so those are the ones with the base
14 numbers that we provided, those were produced all in
15 discovery.

16 What the experts did not rely on was any linkage
17 between those documents and any of the other documents that
18 may or may not have been produced simply because they were
19 linked within the documents that the experts did rely upon.

20 THE COURT: I'm trying to understand, and, again,
21 this is a technological issue that I just want to make sure
22 I understand and the plaintiffs understand when I hear their
23 argument.

24 The experts were given documents to review and
25 consider. Let's just -- one of the examples -- and there

1 have been a couple that were attached to the pleadings. The
2 expert, given that document and saying I'm relying on this
3 document, did not have access to the linked information? Is
4 that what you're telling me?

5 MR. EWALT: That's correct. The expert did not
6 have access to any metadata indicating that that particular
7 document linked to other documents.

8 THE COURT: Okay. And --

9 MR. EWALT: Excuse me. Just one correction.

10 For non-email documents. For email documents, the
11 link metadata was provided to the plaintiffs, and that would
12 have been available as well.

13 THE COURT: All right. Well, for the 299
14 documents that we're apparently talking about today. Okay.

15 Have you confirmed that with your experts? The
16 reason I want to know this is because, you know, there will
17 be consequences if, in fact, the expert, in his or her
18 deposition, is asked: So you didn't look at this
19 information that says linked here or see there. And if it
20 comes out in their expert -- in their deposition that they
21 did, in fact, look at that information and had access to
22 that information, then what you're telling the Court is not
23 right. You understand what I'm trying to get at here?

24 MR. EWALT: I do, Your Honor.

25 THE COURT: And I just -- I don't want there to be

1 any confusion when you say the expert did not rely or refer
2 to the hyperlinks.

3 MR. EWALT: Yes, Your Honor.

4 THE COURT: And you're willing to live with that?

5 MR. EWALT: Yes, Your Honor. They were -- they
6 were -- the experts did not have access to this linkage
7 data. It does not -- it is not known in the format that the
8 plaintiffs seem to believe it is known to Google right now.

9 Now, we could do it through manual process, we
10 could figure it out. So, in that sense, the information is
11 known to Google, and through some manual effort, it could be
12 figured out.

13 THE COURT: Known to Google and used by the
14 experts are two different things. I mean -- and I think the
15 focus of this motion is information that was used by the
16 experts in preparing their reports.

17 MR. EWALT: Yes, Your Honor. This information was
18 not used by the experts in preparing their reports.

19 THE COURT: And, again, you're confident of that,
20 and you're willing to live by any consequences if that is
21 not accurate?

22 MR. EWALT: Yes, Your Honor.

23 THE COURT: All right. Ms. Wood, let me hear from
24 you. I think you can understand what my -- asking Mr. Ewalt
25 about that.

1 There are a lot of things that get referred to in
2 expert reports. You know, dictionary definitions, you know,
3 you have to produce a whole dictionary and that kind of
4 thing.

5 So what is it that you think you want in this
6 motion? And help me understand how these 299 documents were
7 identified.

8 MS. WOOD: So let me start with the second
9 question, how they were identified.

10 We are not asking for every document that their
11 experts relied on. As we indicated, there were over 2,500
12 pages of expert report material. We've -- I don't know the
13 number, but presumably thousands, if not tens of thousands
14 of documents that the experts relied upon. We are asking
15 for a subset of those that have hyperlinks that are not
16 identified in the metadata.

17 Some documents do have the hyperlinks identified
18 in the metadata so that we can see when there's a hyperlink,
19 that hyperlink goes to this document, and we're on a level
20 playing field with Google when that happens; however, for
21 other documents, the 299 that we've identified in their
22 2,500 pages of expert reports, those are documents where
23 we're not on a level playing field with Google.

24 THE COURT: Well, you're on a level playing field
25 with Google's experts. And that is -- I mean, you've had

1 these 299 documents throughout the discovery period, so --

2 MS. WOOD: Well --

3 THE COURT: -- there's no issue that these 299
4 documents weren't produced during the fact discovery; right?

5 MS. WOOD: The 299 documents were produced, but,
6 again, always with the understanding that under the ESI
7 order, we have the ability to request reasonable and
8 appropriate hyperlink data to be provided to us so that we
9 have a full and complete picture.

10 Again, the analogy that we articulate in our
11 papers -- which we think is compelling -- is as if they
12 cited an email but refused to give us the attachments to the
13 email. No one in their right mind in this day and age would
14 think you could cite an email and then withhold the
15 attachments to the email and have a complete presentation of
16 a document. These hyperlinks are no different.

17 I was, you know, old enough to have practiced when
18 email was new, and we did have fights about this at the
19 time, whether an attachment was a part of a document or a
20 separate document because it was an attachment and not in
21 the context of the email itself. We don't have those fights
22 anymore, because there's a recognition, through the Federal
23 Rules of Civil Procedure and the Federal Rules of Evidence,
24 that a document includes its attachments.

25 Google has access to the attachments. Google has

1 access -- if they wanted to give their experts, they could
2 choose which documents they wanted to give those experts the
3 hyperlink to and which they didn't. We want that choice.
4 We want to be able to use the documents the experts relied
5 upon to push and verify their opinions. And to handicap us
6 by not giving us the entire document, not giving us the
7 hyperlink, will prejudice us, both in the context of the
8 depositions, and ultimately the trial in this matter.

9 You know, defendant tried to accuse us of doing a
10 dress rehearsal here. We're doing nothing other than being
11 very transparent with them and with the Court, that this is
12 going to be a continuing problem. We're going to have
13 summary judgment exhibits, we're going to have trial
14 exhibits. And the United States cannot contemplate a regime
15 where we have incomplete documents, where Google gets to
16 rely on a cherry-picked portion of a document without giving
17 us the hyperlinks that may impeach that. It is an
18 incomplete document, in our view, and we need to be able to
19 have the entire document for appropriate context.

20 There's no prejudice to Google from this motion.
21 They've already agreed in certain instances. First of all,
22 they agreed in the ESI order to do this. The ESI --

23 THE COURT: That was during fact discovery; right?

24 MS. WOOD: That was during discovery.

25 THE COURT: Right.

1 MS. WOOD: This is still discovery. This is
2 expert discovery. It's no less discovery than anything
3 else.

4 And as Your Honor is well aware, it's ironic that
5 they would raise the close of fact discovery as an argument
6 in this case, given that we're still receiving documents
7 from them as recently as last week. So it's a little
8 specious to consider that the close of fact discovery
9 precludes us from asking for hyperlinks, when we just got
10 documents last week. We couldn't ask for a hyperlink for
11 those documents? Now, admittedly, I'm not saying that all
12 299 fall in that category, but I am saying we had a --

13 THE COURT: None of them fall in that category.

14 MS. WOOD: None of them fall in the category of
15 having been produced last week.

16 THE COURT: Right.

17 MS. WOOD: Many of them fall in the category of
18 having been produced after the fact discovery cutoff, to be
19 clear. Let's remember that the majority of the documents
20 produced in this case were produced after the fact discovery
21 cutoff.

22 THE COURT: Well, I extended the fact discovery
23 cutoff.

24 MS. WOOD: Vis-a-vis Google alone, yes, that is
25 right, Your Honor.

1 But, again, if you read the text of the ESI order,
2 there is no time limitation to the request being made for
3 these hyperlinks. This is information that Google has that
4 leaves us without complete context into what are, by
5 definition, important documents because they're being cited
6 by their experts. And so to handicap us to not be able to
7 view an entire document that their expert has said supports
8 their opinions in this case by using hyperlinks in that
9 document that could very well impeach the expert's opinions,
10 is handicapping one side of the case merely because of the
11 manner in which Google decides to store its documents.

12 And, frankly, in all candor, Your Honor, the only
13 thing that we regret is being accommodating when we
14 initially agreed to the ESI order. We thought the parties
15 would be able to work out this issue. We were not
16 insisting -- though, in regret -- in retrospect, I now
17 regret it -- that they produce hyperlinks for all of the
18 millions of documents they've produced in this case. We
19 agreed to be reasonable, and we think it is reasonable to
20 ask them to produce hyperlinks for documents they,
21 themselves, want this Court and the jury ultimately to rely
22 on.

23 Are we really going to have the jury presented
24 with exhibits at trial that contain hyperlinks that no one
25 in the courtroom but Google has seen? They have this

1 information. The information is undeniably relevant, and we
2 think it handicaps the United States to not be able to have
3 it.

4 THE COURT: So every document that's referred to
5 in an expert -- or an expert report that relies on a
6 document, you're saying that every document in that document
7 that the expert relies on you think you're entitled to
8 get --

9 MS. WOOD: If the --

10 THE COURT: -- in discovery because they
11 mention -- they're relying on a document, and if that
12 document refers to another document, you're saying they need
13 to produce that other document?

14 MS. WOOD: Your Honor, would you have the same
15 question if we were talking about an email in an attachment?
16 If they cited an email and they had not given us the
17 attachments, I dare say Your Honor would not be asking me
18 why I needed the attachments to the email they cited. The
19 attachment is essential to understanding the context of the
20 communication. The attach- --

21 THE COURT: Well, you don't know that, and that's
22 one of the problems with your motion. You picked out 299;
23 you didn't pick out particular links. This is important, I
24 need this link, or I need that link. You said there are 299
25 documents, I want all the links in every one of those

1 documents, go fish.

2 MS. WOOD: Your Honor, if that is what is
3 dispositive to the Court, we would be happy to go back and
4 isolate the links within the 299 that are most significant.

5 Again, it's a question of them -- once they pull
6 up the document, it's literally a question of them clicking
7 on it to find out what the Bates number is. But if Your
8 Honor wants us to decrease that burden to them by simply
9 identifying the most important links within these 299
10 documents, we will take on that responsibility, and we will
11 do it expeditiously.

12 THE COURT: Well, looking at what has happened in
13 the past as far as your requests relating to non-expert
14 documents --

15 MS. WOOD: Yes, Your Honor.

16 THE COURT: -- so you've asked them in the past to
17 do that.

18 MS. WOOD: Yes, Your Honor.

19 THE COURT: What have the results been that you've
20 had -- you have the documents, you just want to know where
21 they are. Is that, for the most part, what happened?

22 MS. WOOD: There's also been -- again, for the
23 largest sample that we've had, which is our recent
24 meet-and-confer about the 199, we understand that
25 approximately half of the linked documents are ones that are

1 already in our production, but we have no way of knowing
2 that.

3 You know, it can say, for a more detailed
4 explanation of the problems with this approach, see this.
5 And literally the word "this" is underlined with a
6 hyperlink. And so we have the "this" with the more detailed
7 explanation or the problems associated with this issue, but
8 we have nowhere to find "this" as a document in our millions
9 of documents that Google's produced. Google has that
10 ability, because Google can click on the link that says
11 "this" and see the Bates number and tell us what that is.

12 For some portion, Google has informed us that it
13 does link to public material. Again, we don't know that.
14 The link doesn't say -- doesn't provide information to say,
15 if you want to see the public material at wwcnn.com [sic],
16 .whatever, we could do that on our own. We're talking about
17 links that we can't identify.

18 So to the extent that -- and there have been
19 certain instances where, for whatever reason I don't fully
20 understand, Google has come back to us and said they can't
21 find the link at all. And then obviously neither side has
22 it, it's a missing document, you know, both sides have to
23 live with that. But, for the vast majority of the
24 documents, at least in the sample based on our recent
25 meet-and-confer, these are documents that are already in the

1 production.

2 And the reason why that troubles me so is that
3 that means that at some later point down the line we've got
4 a witness on the stand, the witness is, you know, responding
5 to a cross-examination about a given document that has a
6 hyperlink in it, and the witness insists on seeing that
7 hyperlink to give a fulsome answer. Google could pull up
8 the hyperlink and put the document in front of the witness
9 because the document's been produced, but it's been hidden
10 from us. Not on purpose; I'm not suggesting that. But,
11 effectively, we have no way to have the information that
12 they have. And that's the lack of parity that I think is
13 prejudicing the United States in its prosecution of this
14 action.

15 THE COURT: So let me just -- referring to your
16 exhibit in the reply that you filed -- I'm just trying to
17 understand. If you look at page 2 of that document.

18 MS. WOOD: The Exhibit 1 to our reply?

19 THE COURT: Yes.

20 MS. WOOD: Yes, Your Honor.

21 THE COURT: There is -- under the heading
22 contracting, okay, middle of the page.

23 MS. WOOD: Yes.

24 THE COURT: There are two underlined documents
25 that are there.

1 MS. WOOD: Yes, Your Honor.

2 THE COURT: I assume -- I mean, is that what
3 you're talking about as well as the -- so --

4 MS. WOOD: Yes, Your Honor.

5 THE COURT: -- you're telling me you don't know
6 what those are?

7 MS. WOOD: Correct, Your Honor. They have a title
8 here. They don't always have a title. This is an example
9 where --

10 THE COURT: But I'm trying to get --

11 MS. WOOD: Yes.

12 THE COURT: There are other documents that say
13 paren link paren.

14 MS. WOOD: Correct.

15 THE COURT: That's why -- I understand that
16 doesn't tell you anything about what the paren link paren --

17 MS. WOOD: Even for this one --

18 THE COURT: -- other than if you take the time to
19 read the sentence that precedes that, it could tell you what
20 it is, but it doesn't necessarily name it in and of itself.

21 MS. WOOD: It could give you search terms you
22 could enter into the search field to look through the
23 millions of documents to find it. But there may be more
24 than one DBN manage terms -- well, I don't want to read from
25 the --

1 THE COURT: Right.

2 MS. WOOD: There may be more than one document in
3 the production with that title.

4 So, again, even the title doesn't tell us what we
5 need to know because we can run that title through the
6 production and come back with 100 documents with different
7 dates, different forms of draft, different -- so it's
8 knowing what -- I mean, and where this often comes up is
9 you'll have the summary of a meeting, attached -- you know,
10 here is a summary of the meeting, we considered the
11 following options, we considered so-and-so's proposal link.

12 We don't have the proposal. There's no way for
13 us -- we can do a date search for a document entitled
14 proposal at or around the date of the meeting. But what if
15 the document wasn't actually called proposal? What if the
16 document had the term, you know, options in the title?

17 We really have genuinely tried to work around this
18 and engage in self-help to try to find these documents.
19 Again, we're not asking for every document their expert
20 cited; we're asking for the ones where the hyperlinks are
21 important and where we don't have the ability to locate them
22 within the production, yet Google does.

23 THE COURT: Okay. Anything else?

24 MS. WOOD: I'll just offer another example of
25 where, you know, we've taken our limited, you know, precious

1 ten depositions, you'll recall, and when we've had Google
2 witnesses on the -- on the stand -- in the deposition seat
3 and we've asked them questions about documents that contain
4 hyperlinks, the witnesses often say, I can't really answer
5 that question, it's referring to a document I can't see.
6 This has been a recurrent problem. We wouldn't come to the
7 Court for something we didn't think was important.

8 THE COURT: But if the expert says I never looked
9 at it, didn't rely on it --

10 MS. WOOD: If it impeaches the expert's opinion in
11 the case, the fact that they chose not to look at it --

12 THE COURT: Well, they never had it. They didn't
13 have access to it. That's the thing that I'm having a hard
14 time understanding.

15 MS. WOOD: But that was Google's choice. Google
16 can choose to give them the hyperlink any time that it
17 wants. We want that choice. We want the same choice that
18 Google has to give the document.

19 If the document doesn't exist and neither side has
20 it, that's one thing, but that's not the situation here.
21 The documents in the hyperlinks are available to Google, or
22 at least to the extent they are available to Google, we want
23 that, too. If it's a circumstance where Google can't find
24 the hyperlink because it's broken or for any other reason,
25 then we understand that, and we think -- you know, that's

1 not what we're here to argue about today.

2 What we're here today is to ask to be put on equal
3 footing so that when a document contains a hyperlink, we,
4 too, have the choice to show our expert the hyperlink. We,
5 too, have the choice to use that hyperlink when examining
6 the expert at their expert deposition. That is the
7 fundamental nature of discovery.

8 And, again, the fact that the technological means
9 of attachment is a hyperlink as to whatever the
10 technological means is by which an attachment was originally
11 attached to an email, really makes no difference.

12 This is exactly like an email with a missing
13 attachment. The attachment was part of the original
14 communication. It is part of the context of the document
15 and the meaning of the communication.

16 If there are hyperlinks to phone numbers or
17 extraneous things, they're not interested in that. And,
18 again, if Your Honor orders us to go back and focus on only
19 the hyperlinks that are substantive, we'll be more than
20 happy to do that. But to say these hyperlinks aren't
21 relevant and shouldn't be produced -- again, it's not really
22 a question of whether they should be produced; it's a
23 question of whether they should be identified in the
24 metadata as having been associated with the original
25 document. Because the people at Google who are exchanging

1 these documents, for them, it's exactly the same as an email
2 attachment. They click on the link. That's why the links
3 are there.

4 THE COURT: Okay. All right. Mr. Ewalt, respond
5 to the it's just like an email attachment, or we need it to
6 make full context of what's contained in the document first.

7 MR. EWALT: Yes, Your Honor.

8 And so I think a little context is in order here.
9 I'm sure Your Honor recalls that this case was brought after
10 a long investigation where many hundreds of thousands,
11 millions of documents were produced to the government. They
12 were well aware of this link document issue before they ever
13 filed their complaint.

14 At the beginning of this case, we negotiated an
15 ESI order that Your Honor signed, and there's a provision of
16 that order that addresses precisely this issue. It's in --
17 on page 13 of the ESI order in paragraph 6, the last
18 sentence, and it reads: "For the avoidance of doubt,
19 documents that are linked are not part of the same family
20 for purposes of this order."

21 THE COURT: Okay. But there's also provisions for
22 asking for information.

23 MR. EWALT: Correct, Your Honor. But this
24 provision addresses head-on the argument that we should
25 treat these just like attachments to emails; this sentence

1 says we should not.

2 And Your Honor is exactly correct, there are other
3 provisions addressing how we should treat linked documents,
4 not like attachments to emails, but in a particular way.
5 And that provision for non-emails allows the plaintiffs to
6 make a reasonable and proportionate request for linked
7 documents. And so, you know, our position is that that --
8 that made sense during fact discovery. Fact discovery is
9 long since closed.

10 THE COURT: Why do you think it's limited to fact
11 discovery? I mean, you know, you produced a document the
12 last day of fact discovery, they don't get to ask for linked
13 information? There's nothing that says explicitly that that
14 provision applies only during the fact discovery period.
15 The parties now are focusing the, you know, millions of
16 documents down to probably tens of thousands of documents
17 that they think are, you know, the most significant hot
18 documents. And so your experts have obviously identified
19 certain documents that they think are significant in
20 supporting their opinions, and so the parties are now
21 focusing their attention on those documents.

22 And I'm having a hard time understanding why
23 allowing some information relating to the links in those
24 documents -- and, again, I don't know whether the 299 were
25 all of the documents that were identified that had links or

1 whether there was some filter put into place, you know, of
2 the 1,000 documents, we're picking 299, or they said every
3 document that had, you know, some link information in it, we
4 want everything in it. I don't -- do you have any
5 understanding as to that?

6 MR. EWALT: My understanding, Your Honor, is that
7 document started with the expert reports and saw all the
8 documents that were cited there.

9 THE COURT: How many were cited in the six or
10 eight expert reports?

11 MR. EWALT: I'm sorry, I don't know the answer to
12 that.

13 THE COURT: More than 299?

14 MR. EWALT: I would suspect so.

15 THE COURT: Okay.

16 MR. EWALT: So they started there. I suspect then
17 they looked to see are these particular metadata fields
18 blank. And if they were blank, then I think that's where
19 they got the 299. And I think all three examples of the
20 documents they put in front of us are non-email documents,
21 where -- that was the agreement was that that metadata would
22 not be provided for those documents. That was in the ESI
23 order.

24 And so my understanding of what the government has
25 done here is they've said any document that doesn't have a

1 link, without looking at how important that document is,
2 without articulating any need on a document-by-document
3 basis, they said we want them all, and for each one of those
4 documents, we want all the links in them. And we know from
5 past experience that that could be many thousands of
6 documents. That requires us to track down each and every
7 one.

8 And we have submitted a declaration to explain the
9 process that we would go through to check each and every one
10 of those. Some of those are easy. Some of them you can
11 find in a matter of minutes. Some of them it can take
12 hours. And we can't know for sure exactly the entire burden
13 without going through the whole exercise of that.

14 THE COURT: All right. I think I understand
15 Google's position.

16 Ms. Wood, I'll give you the last say on this.

17 MS. WOOD: Again, Your Honor, we have attempted to
18 be judicious. If you look at the entire scope of this case
19 and the number of documents that have been produced, we have
20 attempted to be very judicious. These are documents that
21 Google has put into central issue by having their expert
22 cite them in the expert reports. These are important
23 documents in the case by definition. If there are certain
24 hyperlinks within the documents, you know, we are happy to
25 come back and be more specific about which hyperlinks that

1 we need and which ones we don't need. But the -- but the
2 fundamental import is the documents themselves. 299
3 documents out of 6 million documents is a very small sample.
4 And this is exactly what we bargained for in the ESI order
5 when we acceded to Google's concerns about the burden.

6 The statement in the ESI order that it shall not
7 be, for purposes of this order, treated as an attachment, is
8 simply what gives them permission not to give it in the
9 first place. But that is what motivated us to ensure that
10 we had the ability to ask for them on a reasonable basis.

11 We never asked Google to find 600 million --
12 6 million documents and all the hyperlinks they're in. We
13 probably should have, but we didn't. We tried to be
14 reasonable and accommodating. And now we're being punished
15 for that reasonable accommodation by being told that even
16 when we narrow our request to an infinitesimal percentage of
17 the entire production, that that, too, is unreasonable.

18 THE COURT: All right. Well, I think I understand
19 the issues and the needs and real desires from the parties,
20 and there is some I think support for having information
21 provided that was set out in our ESI order. But the idea
22 that just because a document is being referred on by the
23 expert and that document may contain a hyperlink in some
24 part of the entire document, you know, I don't see that as
25 being something that is reasonable under the circumstances.

1 What I'm going to do is I'm going to grant the
2 motion in part. I'm going to give the plaintiffs the
3 opportunity to start with 100 links, specific links. Not
4 100 documents that have links. So you need to take some
5 time and effort, look at the documents, see what links you
6 think might be significant to what your expert may or may
7 not want or what you may or may not need in questioning the
8 expert, looking at the document that's being referred to and
9 the opinion of the expert. Because if the document has one
10 sentence that relates to what the expert is relying on and
11 the link is in a far separate part, it's not worth fighting
12 about.

13 So you'll get to do 100 to begin with. You'll
14 need to provide them with the information as to the 100
15 specific links. Again, I don't want to -- because I have no
16 idea how many there are. I know there are 299 documents.
17 Some may have one link. Some may have dozens of links. It
18 may be the same link, I don't know. But you'll start out
19 with that, we'll see how it goes from there; okay?

20 MS. WOOD: Thank you, Your Honor. Could I just
21 ask one question about the procedure?

22 THE COURT: Sure.

23 MS. WOOD: With respect to the timing, we would
24 ask -- given the links should be within minutes for these
25 100, we would ask that these be produced in time for each

1 expert's deposition.

2 MR. EWALT: We don't know, Your Honor, if
3 hyperlinks can be done within minutes because we don't know
4 which links they're talking about.

5 THE COURT: How long is it going to take you to
6 get them the links?

7 MS. WOOD: We'll get them by Monday.

8 THE COURT: Okay. Well, the experts aren't being
9 deposed until the final reports are done; right? So we'll
10 have until sometime in March to do that, so ...

11 MS. WOOD: The first expert deposition is on
12 February 16th, Your Honor.

13 THE COURT: Okay. So the rebuttal reports haven't
14 been done yet; have they?

15 MS. WOOD: The rebuttal reports we're furiously
16 working on right now. They're due February 13th, and the
17 first deposition is on the 16th.

18 THE COURT: Okay. Well, I guess is there a way
19 for you to structure the links as to which experts you need
20 to have them by?

21 MS. WOOD: Yes, Your Honor. We will do that.

22 THE COURT: Okay. Do that. And you need to
23 provide them with that information.

24 I've read the declaration, the declaration talks
25 about what needs to be done. Doing it 100 times over isn't

1 going to be that difficult. It will be modest compared to
2 what other efforts Google has had to do in the discovery end
3 of this case. So I think under the circumstances, it is
4 appropriate for me to go ahead and allow them to get
5 additional information to at least 100, provide them with
6 that list as quickly as you can, and to the extent that they
7 need to be prioritized as to certain experts, just needs to
8 be done and produced to them before the depositions begin;
9 okay?

10 MS. WOOD: Understood, Your Honor. Thank you.

11 THE COURT: Anything else in this case?

12 MR. EWALT: No. Thank you, Your Honor.

13 THE COURT: Okay. Thank you.

14 MS. WOOD: Thank you.

15 (Proceedings adjourned.)

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17 I certify that the foregoing is a true and accurate, to the
18 best of my ability, transcription of proceedings recorded by
19 electronic sound recording (FTR system).

20 Stephanie Austin

21 Stephanie M. Austin, RPR, CRR